THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

August 9, 2019

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

David Wood MacLennan, President
Cargill, Inc.
15407 McGinty Road W MS26
Wayzata, MN 55391
Certified Mail # 7018 1830 0000 2525 4523

Leon Normandeau, President
Salt City, Inc.
40 Hayes Ave.
West Springfield, MA 01089
Certified Mail # 7018 1830 0000 2525 4530

Re: 60-Day Notice of Violations and Intent to File Suit Regarding Noncompliance with Federal Clean Water Act: 163 Union Street, Westfield, Massachusetts

Dear Messrs. MacLennan and Normandeau,

We write to give notice that the Massachusetts Attorney General's Office intends to file a civil action on behalf of the Commonwealth of Massachusetts in the United States District Court for the District of Massachusetts under section 505 of the Federal Clean Water Act, 33 U.S.C. § 1251, et seq. (the "Clean Water Act" or "the Act") against Cargill, Inc. ("Cargill") and Salt City, Inc. ("Salt City") (jointly, "Cargill") for violations occurring at their road salt warehousing, storage, and transportation facility at 163 Union Street in Westfield, Massachusetts (the "Facility"). The subject of the action will be Cargill's discharges of industrial stormwater into the Westfield municipal separate storm drain system, which discharges to Powdermill Brook, a tributary of the Westfield River. These discharges are not authorized by any permit issued by the United States Environmental Protection Agency ("EPA") and therefore violate the Act.

The Attorney General's Office will ask the Court to order Cargill's future compliance with the Act, assess civil penalties in an appropriate amount,[1] award the Commonwealth its litigation costs, including attorney and expert fees, and award any other relief the Court deems appropriate. The Commonwealth's complaint will be filed a minimum of 60 days after the postmark date of this letter. This is a formal 60-day notice of intent to sue that is being served pursuant to 40 C.F.R., Part 135.

[1] The Statute authorizes the Court to assess a penalty of up to $53,484 a day for each violation of the Act. *See* 33 U.S.C. § 1319(d) and 83 Fed. Reg. 1190, 1193 (Jan. 10, 2018). The statutory maximum civil penalty for violations that occurred on or before November 2, 2015 is $37,500 per day, per violation. 40 C.F.R. § 19.4, Table 1.

This notice is being provided by the Commonwealth of Massachusetts, acting by and through the Office of Attorney General Maura Healey. Counsel for the Commonwealth of Massachusetts in this case is:

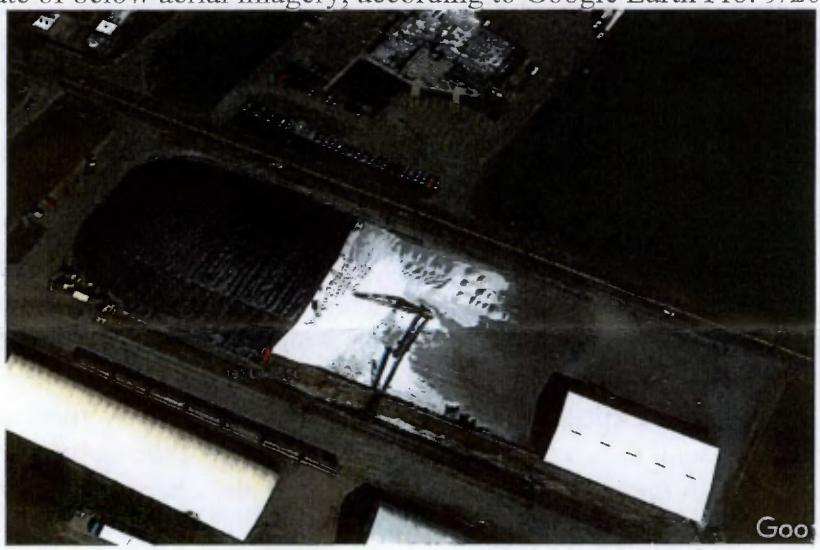
Nora J. Chorover, Special Assistant Attorney General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
617-963-2642 (direct)
Nora.Chorover@mass.gov

BACKGROUND

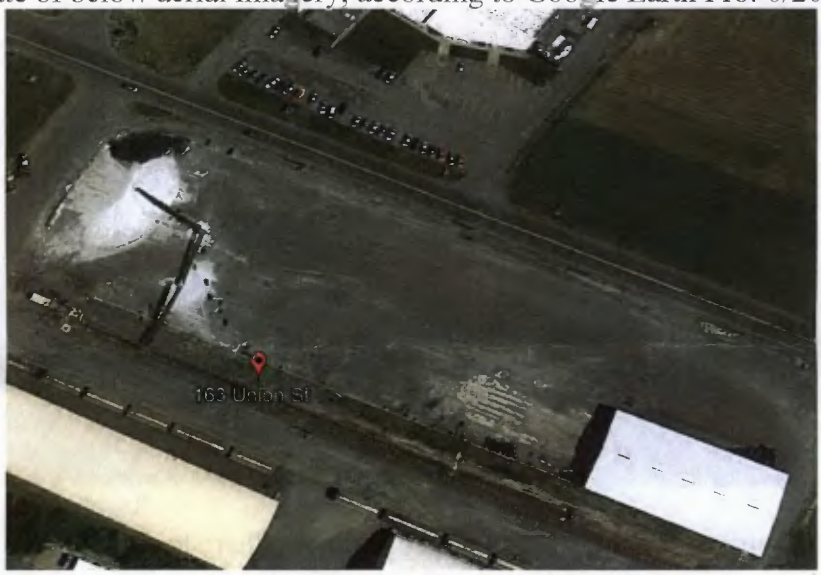
The Facility

The Facility consists of approximately 10 acres of exposed impermeable surface. One or more piles of road salt is consistently present at the Facility. The size of the salt pile varies, depending on the season and other factors, but it can be as large as approximately two acres and as high as approximately 40 feet. Frequently, large portions of the salt piles are uncovered, as depicted in the following aerial photographs found on Google Earth:

Date of below aerial imagery, according to Google Earth Pro: 9/2017



Date of below aerial imagery, according to Google Earth Pro: 6/2018



Since at least July 1, 2014, during the rain events listed on Attachment A, Cargill has discharged polluted stormwater off the Facility and into Westfield's municipal stormwater system via catch basins on Union Street, including from the following catch basins as depicted on Google Maps "Street View" (images taken by Google in July 2017 and annotated with red arrow by Attorney General's Office):

In addition, salt and other pollutants at the Facility adhere to and are tracked off the Facility and on to Union Street by equipment and vehicles (for example, tires and treads). Pollutants from the Facility that are tracked onto Union Street by equipment and vehicles are picked up in stormwater and discharged into the catch basins on Union Street and thence to Powdermill Brook.

Potential Pollutant Sources and Pollutants

Sodium chloride (road salt) is composed of sodium ions and chloride ions. Other components may include ferrocyanide, which is used for anti-caking, and impurities such as phosphorous and iron. These other components can represent up to 5 percent of the total weight of road salt. The components of road salt are mobilized by rain, melting snow, melting ice, and other mechanisms and transported into the environment, including into aquatic ecosystems. The chloride ions in road salt runoff will remain dissolved in the liquid and cannot be treated or filtered with best management practices (such as haybales). Once runoff contaminated with road salt reaches wetlands or streams, the chloride remains in the watershed until it is flushed downstream.

Elevated chloride can be toxic to many forms of aquatic life and can harm plants and animals by interfering with their "osmoregulation," the biological process by which they maintain the proper concentration of salt and other solutes in their internal fluids. Difficulties with osmoregulation can inhibit survival, growth, and reproduction and can reduce the diversity of organisms in streams. Aquatic species that may be adversely impacted include plants, fish, macroinvertebrates, insects, and amphibians. Water contaminated with road salt creates a higher water density and will settle at the deepest part of the water body where water current velocities are low. This can lead to a chemical stratification which depletes dissolved oxygen at the bottom layer of a waterbody, rendering it unsuitable to support aquatic life.[2]

[2] *Health and Economic Impacts of Road Salt,* New Hampshire Department of Environmental Services, downloaded June 20, 2019: https://www.des.nh.gov/organization/divisions/water/wmb/was/salt-reduction-initiative/impacts.htm

According to a report from the University of Rhode Island, uncovered salt storage piles lose about 20% of their salt each year, much of which finds its way into nearby waterways.[3] The National Science Foundation has reported that salty, alkaline freshwater can create significant problems for drinking water supplies, urban infrastructure, and natural ecosystems. For example, the well-documented water crisis in Flint, Michigan, occurred when the city switched its primary water source to the Flint River in 2014. The river's high salt load, combined with chemical treatments, made the water corrosive and caused lead to leach from water pipes.[4] The area where Westfield's municipal storm sewer system empties into Powdermill Brook is near a potential source of drinking water for Westfield and is just downstream from the City's number two drinking water well.

The Westfield River and its Tributary Powdermill Brook

The Westfield River is a major tributary of the Connecticut River that drains the eastern slopes of the Berkshire Hills of southwestern Massachusetts, then joins the Connecticut River in Agawam. The Westfield River features native trout fishing, rugged mountain scenery, and a historical mill town settlement. It provides over 50 miles of the Northeast's finest whitewater canoeing and kayaking. It is also home to several threatened and endangered species. The Westfield River and its tributary Powdermill Brook have been designated by the Commonwealth as "Coldwater Fish Resources." Coldwater Fish Resources are particularly sensitive habitats used by reproducing coldwater fish to meet one or more of their life history requirements.

The Commonwealth has designated the area of Powdermill Brook and the Westfield River less than a mile downstream of the Facility as Estimated and Priority Habitat for a state-listed rare species, known as "Creeper," a freshwater mussel. The Creeper's habitat may be impacted by Cargill's stormwater discharges to the Westfield municipal storm drain system, which drains to Powdermill Brook. This same area has been designated by the Commonwealth as "Core Habitat," critical for the long-term persistence of rare species and other species of conservation concern. According to the Massachusetts Department of Fish & Game, protection of Core Habitat is essential to safeguard the diversity of species and their habitats, intact ecosystems, and resilient natural landscapes across Massachusetts. The tributary creeks and wetlands within the Westfield River watershed are important in protecting aquatic resources by acting as a natural filtering system for water quality, for preventing downstream flooding, and by providing natural habitats to native species.

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[3] *Chlorides in Fresh Water*, University of Rhode Island, College of the Environment and Life Sciences, Hunt, M., Herron, E. Green, L. (March 2012).

[4] *Winter Road Salt, Fertilizers Turning North American Waterways Increasingly Saltier,* National Science Foundation News Release 18-002 (January 8, 2018), available at https://www.nsf.gov/news/news_summ.jsp?org=NSF&cntn_id=244099&preview=false

CARGILL'S VIOLATIONS AND DATES OF VIOLATIONS

A. THE REQUIREMENTS OF THE ACT

1. Pollutant Discharges Without a Permit Are Illegal.

The Clean Water Act makes the discharge of pollution into waters of the United States unlawful unless the discharge is in compliance with certain statutory requirements, including the requirement that the discharge be permitted by EPA under the National Discharge Elimination System ("NPDES"). *See* sections 301(a), 402(a), and 402(p) of the Act, 33 U.S.C. §§ 1311(a), 1342(a), 1342(p). This prohibition applies to discharges of industrial stormwater.

2. Ground Transportation and Warehousing Facilities Must Comply with EPA's General Industrial Stormwater Permit.

Industrial stormwater is runoff from precipitation (rain or snow) that lands on industrial sites such as road salt warehousing, storage, and transportation facilities. This runoff is often polluted by materials that are handled or stored on the sites. Stormwater is the leading cause of water quality impairment in Massachusetts. During every rain or snowmelt event, runoff flows over the land surface, picking up potential pollutants such as sediment, organic matter, nutrients, metals, and petroleum by-products. Polluted stormwater runoff can be harmful to plants, animals, and people. Excess organic matter may deplete oxygen in waterbodies, impairing or killing aquatic organisms. Excess sediment and other solids cloud the water and destroy aquatic habitat, making it difficult or impossible for many existing species in the water to grow, and increasing the presence of nuisance species. Excess nutrients cause algae blooms that reduce dissolved oxygen in the water column, harming fish and other aquatic organisms. Bacteria and other pathogens can wash into swimming areas and create health hazards. Toxic pollutants can poison aquatic life. Excessive salt can impact living organisms' ability to thrive and reproduce. Land animals and people can become sick from eating diseased fish or ingesting polluted water.

To minimize polluted stormwater discharges from industrial facilities, EPA issued a general industrial stormwater permit ("Stormwater Permit") under the NPDES program. Ground transportation and warehousing facilities are subject to the requirements of this Stormwater Permit.[5] Ground transportation and warehousing facilities that carry on other types of activities also subject to the requirements of the Permit must also comply with any sector-specific requirements for such co-located industrial activity.[6]

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[5] Permit, Appendix D, pgs. D-2 and D-3.
[6] Permit, pgs. 61, 101.

The Permit requires facilities such as Cargill to, among other things:

a. prepare a stormwater pollution plan ("SWPPP") that, among other things, describes the facility and identifies all stormwater outfalls;[7]
b. submit to EPA a Notice of Intent ("NOI") to be covered by the Permit that lists all stormwater outfalls by a unique 3 digit code and corresponding latitude and longitude coordinates;[8]
c. ensure that pollutant control measures minimize pollutants in stormwater discharges;[9]
d. locate materials, equipment, and activities to contain potential spills;[10]
e. use structural and non-structural control measures to minimize the discharge of sediment;[11]
f. evaluate for and eliminate unauthorized non-stormwater discharges;[12]
g. ensure that stormwater discharges do not cause or have the reasonable potential to cause or contribute to a violation of water quality standards;[13]
h. implement specific best management practices applicable to ground transportation and warehousing facilities;[14]
i. conduct corrective action to expeditiously eliminate excessive stormwater pollution and unauthorized non-stormwater discharges;[15]
j. conduct routine facility inspections at least quarterly[16] and quarterly visual assessments[17] to, among other things, sample and assess the quality of the facility's stormwater discharges, ensure that stormwater control measures required by the permit are functioning correctly and are adequate to minimize pollutant discharge, and timely perform corrective actions when they are not;[18]
k. timely prepare and submit to EPA annual reports that include findings from the facility inspections and visual assessments and the documentation of corrective actions;[19] and
l. comply with any additional Massachusetts requirements, including but not limited to the requirements of the Massachusetts Wetlands Protection Act and the Massachusetts Clean Waters Act.[20]

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[7] Permit, pg. 31.
[8] Permit, Appendix G.
[9] Permit, pg. 14.
[10] Permit, pg. 15.
[11] Permit, pg. 17.
[12] Permit, pg. 19.
[13] Permit, pg. 20.
[14] Permit, pgs. 54-55.
[15] Permit, pgs. 27-29.
[16] Permit, pg. 22.
[17] Permit, pg. 24.
[18] Permit, pgs. 22-26.
[19] Permit, pgs. 49-50.
[20] Permit, pg. 170.

The Permit contains specific requirements concerning pollutant controls for salt piles, and requires all permittees to:

a. enclose or cover storage piles of salt in order to minimize pollutant discharges;[21]
b. implement appropriate measures (e.g. good housekeeping, diversions, containment) to minimize exposure resulting from adding to or removing materials from the pile;[22] and
c. document the location of any salt storage piles in the SWPPP.[23]

B. CARGILL'S VIOLATIONS AND DATES OF VIOLATIONS

1. Violations that Have Occurred on Specific Days During the Last Five Years: Discharges of Stormwater from the Facility Without a NPDES permit

Cargill's violations of the Act's prohibition against unpermitted discharges occurred and are continuing to occur at the Facility each time rain, snow melt, or another factor resulted or results in industrial stormwater discharges from the Facility to the municipal storm sewer system. The days during the last five years on which rain, snow melt, or other factors caused stormwater to be discharged from the Facility to the City of Westfield's storm sewer system are listed on Attachment A hereto. The Commonwealth's complaint will also address any non-permitted stormwater discharge violations that occurred or occur between the last date listed on Attachment A and the date on which the complaint is filed.

2. Violations that Have Occurred on Each Day During the Last Five Years:

The following violations of the Act occurred on a daily basis for the last five years and they are continuing to occur. Cargill has violated the Stormwater Permit by failing to:

a. prepare a SWPPP that, among other things, includes the location of all stormwater outfalls (violation of section 5.2);
b. submit a "complete and accurate NOI" (violation of section 1.2.1 and Appendix G);
c. ensure that pollutant control measures minimize pollutants in its stormwater discharges (violation of section 2.1);
d. locate materials, equipment, and activities to contain potential spills (violation of section 2.1.2.1);
e. use structural and non-structural control measures to minimize the discharge of sediment (violation of section 2.1.2.5);
f. evaluate for the presence of and eliminate all non-stormwater discharges at the Facility (violation of section 2.1.2.9);

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[21] Permit, pg. 18.
[22] Permit, pg. 18.
[23] Permit, pg. 33.

g. ensure that stormwater discharges do not cause or contribute to a violation of water quality standards (violation of section 2.2.1);
h. implement specific best management practices applicable to Motor Freight Transportation and Warehousing facilities (violation of section 8.P.3);
i. include specific SWPPP provisions applicable to Motor Freight Transportation and Warehousing facilities (violation of section 8.P.4);
j. enclose or cover storage piles of salt in order to minimize pollutant discharges (violation of section 2.1.2.7);
k. implement appropriate measures (e.g. good housekeeping, diversions, containment) to minimize exposure resulting from adding to or removing materials from the pile (violation of section 2.1.2.7);
l. document the location of any salt storage piles in the SWPPP (violation of section 5.2.3.5);
m. take corrective action to address excessive discharges of salt to the municipal storm drain system (violation of section 4.1);
n. conduct routine and quarterly facility inspections to ensure, among other things, that control measures are functioning correctly and are adequate to minimize pollutant discharges (violation of sections 3.1 and 3.2);
o. timely prepare and submit to EPA annual reports that include findings from the facility inspections and visual assessments and the documentation of corrective actions (violation of section 7.5); and
p. comply with additional state requirements incorporated by reference into the Permit, including the Massachusetts Wetlands Protection Act and Massachusetts Clean Waters Act (violation of section 9.1.2.1).

CONCLUSION

The Attorney General's Office believes this Notice of Violations and Intent to File Suit sufficiently states the basis for a civil action. During the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of litigation. If you wish to pursue such discussions, please have your attorney contact us within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

COMMONWEALTH OF MASSACHUSETTS

MAURA HEALEY
ATTORNEY GENERAL

By: Nora J. Chorover

Nora J. Chorover
Special Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, Massachusetts 02108
(617) 963-2642

cc: (by certified mail)

Deborah Szaro, Acting Regional Director
EPA New England, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109
Certified Mail # 7018 1830 0000 2525 4561

Martin Suuberg, Commissioner
Massachusetts Dept of Environmental Protection
One Winter Street
Boston, MA 02108
Certified Mail # 7018 1830 0000 2525 4547

Andrew Wheeler, Acting Administrator
US EPA Headquarters, Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington DC 20460
Certified Mail # 7018 1830 0000 2525 4578

Osborne B. Gaugh, Jr.
Registered Agent for Salt City, Inc.
163 Union Street
Westfield, MA 01085
Certified Mail # 7018 1830 0000 2525 4554

CT Corporation System
Registered Agent for Cargill, Inc.
155 Federal Street, Suite 700
Boston, MA 02110
Certified Mail # 7018 1830 0000 2525 4516

ATTACHMENT A
DAYS BETWEEN
JULY 1, 2014 AND JULY 31, 2019
ON WHICH STORMWATER FROM FACILITY
DISCHARGED TO WATERS OF THE UNITED STATES

Month/Year	**Date**
July 2014	2, 3, 4, 7, 13, 14, 16, 23, 27
August 2014	1, 13
September 2014	6, 13
October 2014	1, 4, 16, 22, 23
November 2014	17, 24, 26
December 2014	3, 6, 9, 10, 24
January 2015	18
February 2015	-
March 2015	14, 26
April 2015	3, 8, 10, 20, 21
May 2015	19, 31
June 2015	1, 2, 15, 21, 23, 27, 28
July 2015	1, 10, 27
August 2015	11, 15, 21, 25
September 2015	10, 13, 29, 30
October 2015	9, 28, 29
November 2015	19
December 2015	2, 14, 17, 23, 29
January 2016	10, 16
February 2016	3, 16, 24, 25
March 2016	2, 14, 28
April 2016	7, 26
May 2016	2, 6
June 2016	5, 11
July 2016	14, 30, 31
August 2016	2, 21
September 2016	8, 19, 27
October 2016	22, 27
November 2016	15, 20, 29, 30
December 2016	1, 12, 17, 29
January 2017	3, 12, 23, 24
February 2017	12, 25
March 2017	14, 27, 28, 31
April 2017	4, 6, 21, 25, 26
May 2017	5, 6, 13, 25, 26, 31
June 2017	5, 6, 19
July 2017	7, 18, 24
August 2017	5, 22

Month/Year	**Date**
September 2017	3, 6
October 2017	8, 9, 24, 25, 26, 29
November 2017	-
December 2017	5, 12, 23
January 2018	12, 13, 23
February 2018	4, 7, 10, 11, 23, 25
March 2018	2
April 2018	3, 16, 25
May 2018	15, 19, 27
June 2018	4, 18, 24, 27, 28
July 2018	17, 22, 23, 25, 26
August 2018	1, 3, 4, 17, 18, 22
September 2018	10, 12, 18, 25, 26, 28
October 2018	2, 11, 27, 29
November 2018	2, 3, 5, 6, 9, 13, 15, 16, 19, 26, 27
December 2018	2, 16, 21, 28, 31
January 2019	5, 20, 24
February 2019	6, 12, 24
March 2019	10, 22
April 2019	8, 13, 15, 20, 22, 26
May 2019	12, 13, 23, 28
June 2019	10, 11, 16, 25
July 2019	11, 22, 23, 31